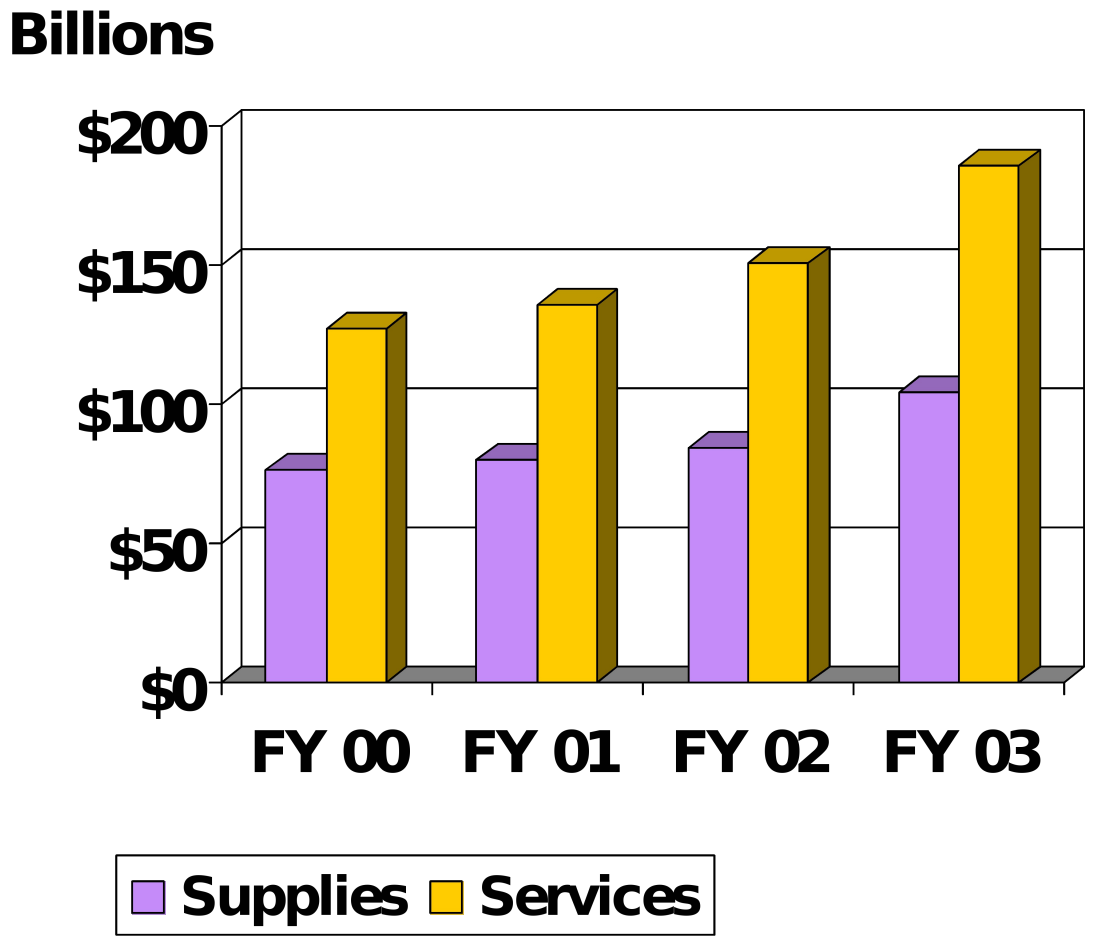
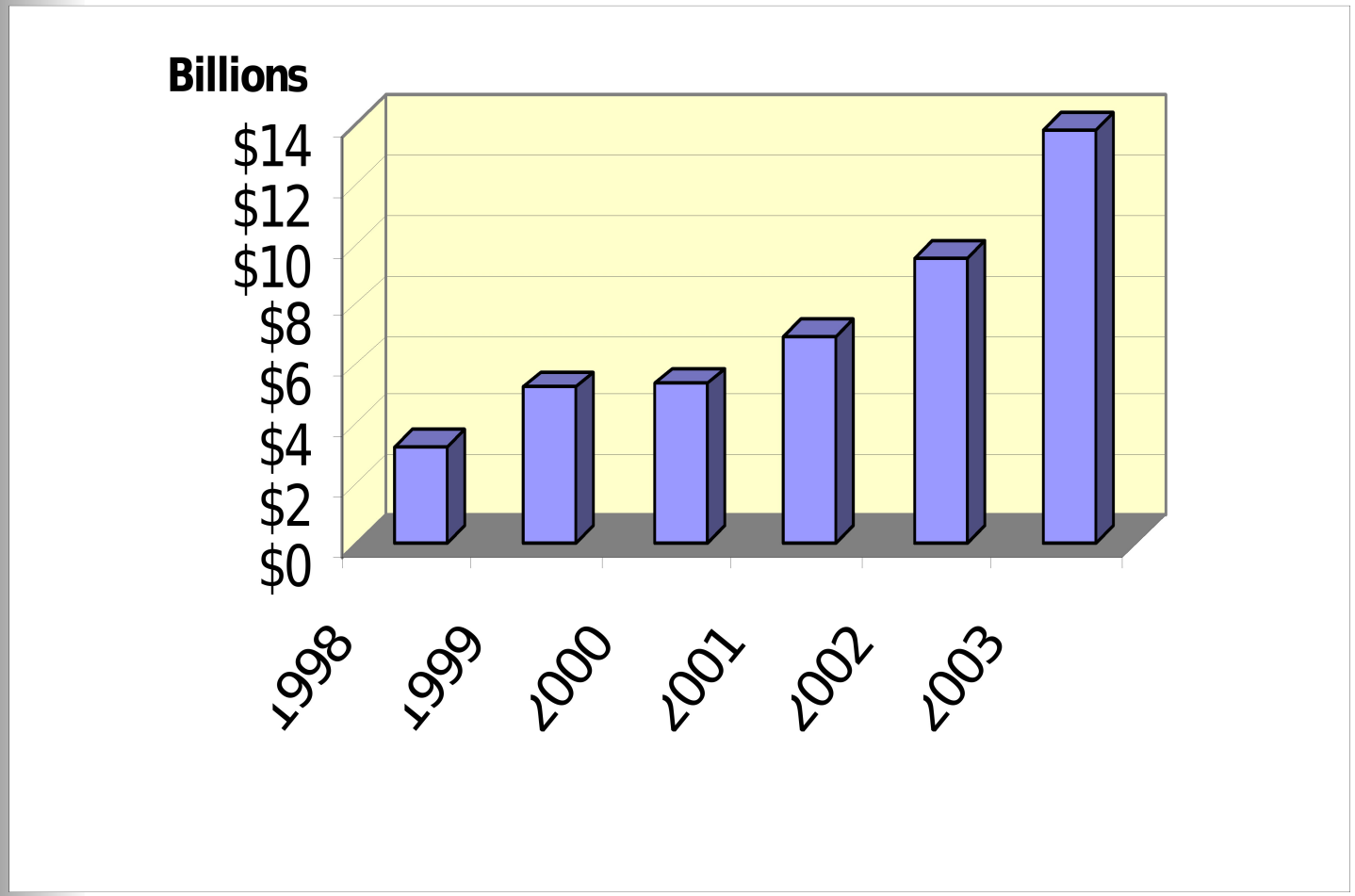
Competition Requirements for Purchase of Services Under Multiple Award Contracts

Section 803

FPDS Data
All Actions over $25,000



DoD Purchases for Services over $100,000 under Multiple Award Contracts



The Beginning

- October, 1994 – Federal Acquisition Streamlining Act (FASA)
  - ✓ Task/delivery orders using multiple award instruments;
  - ✓ Multiple award contractors be given “Fair Opportunity” to compete for task orders; and
  - ✓ Only 5 exceptions to “Fair Opportunity”.

Fair Opportunity Exceptions

- Urgency FAR 16.505(b)(2)
- Unique Source FAR 16.505(b)(2)
- Follow-on Order FAR 16.505(b)(2)
- Minimum Guarantee FAR 16.505(b)(2)
- Authorized by Statute

GAO Finding / DFARS Changes

- September, 1998 – GAO found that short cuts were taken with regards to competition on task & deliver orders.
- March, 1999 – DFARS revised to remind contracting personnel that all purchases over $2,500 made for DoD by another agency are subject to the Economy Act, unless the agency is identified by statute as an agent for the rest of the Government.

DoDIG Findings

- April, 1999 – DoDIG Report found
  - ✓ 78% of delivery orders for products were awarded competitively to the low bidder; BUT
  - ✓ task orders for services were NOT awarded consistent with statutory requirements.

DoD Policy Letter

- April, 1999 – Director of Defense Procurement Letter addressed:
  - ✓ When to use Multiple Award Contracts;
  - ✓ When the follow-on exception can be used;
  - ✓ That price must be a consideration; and
  - ✓ Documentation & reporting requirements.

DoD Contract Review

- June 1999 – Director of Defense Procurement Letter - Each military department selected 10 Multiple Award Contracts for services for further review.
- The competition rate was worse that first projected

New Procurement Reporting Requirement

- July, 1999 – Director of Defense Procurement Letter – revised the DD350 report to collect “Fair Opportunity” information.

FY 2000 NDAA

- October, 1999 – addressed the misuse & abuse of Task Order contracts, by establishing better control of orders placed under multiple award contract instruments.

DoDIG Findings

- March, 2000 – DoDIG Report - Contracts for Professional, Administrative, & Management Support Services
  - ✓ inadequate competition: and
  - ✓ failure to properly award orders under multiple-award contracts.

GAO Findings

- March, 2000 – GAO Report Findings
  - ✓ many large orders awarded without competing proposals;
  - ✓ agencies inappropriately used statutory exceptions to the “fair opportunity” requirement;

FAR Changes

- April, 2000 – FAC 97-17 included:
  - ✓ how to plan for, compete, and administer multiple award task or delivery order contracts;
  - ✓ what must consider when deciding if a multiple award contract is appropriate;
  - ✓ key considerations when placing orders;

FAR Changes

- all awardees be given a fair opportunity to compete on every multiple-award task/deliery order unless a specific exception applies;
- decision to use multiple award contract be documented in the acquisition plan or contract file;
- use of performance based statements of work;

FAR Changes

- guidance on how to develop tailored order placement procedures;
- cost or price be considered as evaluation factor;
- prices for each order be established using the policies and methods in Subpart 15.4; and
- document rationale for order placement.

DoDIG Findings

- September, 2001 – Multiple Award Contracts for Services
  - ✓ less than 26% of task orders were competed;
  - ✓ only 69% of those received more than 1 response.
  - ✓ contracting officer discretion cited as the reason they did not compete the orders (NOTE-- this is NOT a legitimate exception)

Section 803 – Competition Requirements for Purchase of Services Under Multiple Award Contracts

- December, 2001 – FY 02 NDAA required DoD to issue DFARS policy requiring competition in the purchase of services over $100,000 under multiple award contracts.

FSS Orders

- Issue the notice to as many schedule holders as practicable to reasonably ensure that proposals will be received from at least 3 sources that offer the required work; OR
- Contact all schedule holders that offer the required work by informing them of the opportunity for award

Non-FSS Orders

- All awardees that offer the required work must be given the opportunity to submit a proposal.
- The CO must consider all proposals submitted.

FAR Changes

- September, 2002 – FAC 2001-09 included:
  - ✓ definitions for GWAC and MAC;
  - ✓ acquisition planning for task and delivery orders;
  - ✓ funding limitations apply;
  - ✓ work with contractors to ensure “fair opportunity”; and
  - ✓ Economy Act does not apply to FSS contracts.

DFARS Changes

- October, 2002 – DFARS Change Notice 20021025 made changes to:
  - ✓ Subpart 208.4 – Federal Supply Schedules; and
  - ✓ Subpart 216.5 – Indefinite Delivery Contacts.

FSS Survey

- August, 2003 – Multiple Award Schedule Users' Survey found:
  - ✓ 33% of DoD respondents were familiar with Section 803 requirements;
  - ✓ 7.5% of all respondents contacted less than 3 FSS holders;
  - ✓ 27% of all respondents obtained less than 3 quotes; and
  - ✓ reason most cited was lack of reasonable quotes

FAR Changes

- July, 2004 - FAC 2001-24 included the following changes for FSS orders:
  - ✓ Required approval for sole source orders;
  - ✓ Required order offices to follow regulations and laws applicable to requiring activity;
  - ✓ Required the basis for award on best value awards be explained to unsuccessful offerors;
  - ✓ Refined guidance for using Government-wide BPAs,

FAC 2001-24, con't

- Allowed consideration of socio-economic status when identifying competitors;
- Reinforced documentation requirements;
- Encouraged seeking price reductions on any order;
- Allowed credit card payments;
- Clarified termination procedures; and
- Clarified that competition shall not be sought outside the FSS.

GAO Report

- July, 2004 – Recommended DoD:
  - ✓ Develop additional guidance on when logical follow-on and unique services waiver may be used;
  - ✓ Require waiver determinations be supported & documented; and
  - ✓ Establish approval levels for waivers.

Available Training

- November, 2002 – DAU Continuous Learning Module, http://clc.dau.mil/kc/no_login/portal.asp
- March, 2003 – DoD training video
- May, 2003 – FSS Customer Training Course, https://fsstraining.gsa.gov/kc/Securelogin/login.asp?kc_ident=kc0001

References

- NDAA - http://thomas.loc.gov/
- GAO Reports http://www.gpoaccess.gov/gaoreports/index.html
- DoDIG - http://www.dodig.osd.mil/audit/reports/index.html
- DPAP Letters - http://www.acq.osd.mil/dpap/policy/policydocs.htm
- DAR Council - http://www.acq.osd.mil/dpap/dfars/index.htm

Presented by

Debbie Bartlett
Contracting Program Director
Defense Acquisition University
deborah.bartlett@dau.mil